IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

1. S. B. CIVIL MISC. APPEAL NO. 512/2004
2. S. B. CROSS OBJECTION NO. 70/2004

Smt. Reshma Khatwani
Vs.
M/s Saraogi Mansion Estate Pvt. Ltd.

Date of Judgment: 14th September 2006.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Ashok Kumar Sharma, for the Appellant
Mr. G.S.Bapna, for the Respondent.

(Per Court): **REPORTABLE**

The contest between the landlord and the tenant over the payment of provisional rent has raised an interesting legal issue: whether while determining the provisional rent under Section 7 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (henceforth to be referred to as 'the Act', for short), the court has the power to direct the payment of the said rent from the date of filing of the application under Section 6 of the Act or not?

The appellant is challenging the Order dated 9-12-2003, passed by the Additional District Judge, No. 8, Jaipur whereby the learned Judge has fixed the provisional rent of the shop at Rs. 5,500/- per month and has directed the appellant to pay the said amount to the respondent from 17-4-2001, the date of the filing of the suit under Section 6 of the Act.

The brief facts of the case are that the landlord, the respondent before this court, had filed a suit under Section 6 for fixation of standard rent for the shop rented by the appellant. According to the plaint, the Saraogi Mansion is a commercial building situated on M. I. Road of Jaipur—the main artery of Jaipur. The appellant rented out a shop, shop No. 52, situated in the basement of the building and measuring 169 sq. feet on 1-1-93. Initially, an oral agreement was made for the said shop. However, on 5-1-93, the parties

entered into a tenancy agreement whereby it was agreed that the appellant would pay a monthly rent of Rs. 980/- and after every three years the rent would be increased by 25% of the said rent amount. But the respondent claimed that ever since the shop has been rented, the appellant hasn't increased the rent. But during the period of 1993-2001, with the increase in commercial activity in the area, the rental value of the shops both in and around the Saraogi Mansion increased by leaps and bounds. For other premises in the locality, the rental value had increased to Rs. 80/- to Rs. 100/- per sq. feet. Therefore, the respondent felt that the rent received by them is too low. According to the respondent, even if the rental value were to be taken to be Rs. 55/- per foot, the rental value of the premises in dispute should be fixed at Rs. 9300/- per month. Hence, the respondent filed the suit under Section 6 of the Act for fixation of the standard rent.

The appellant denied the respondent's averments and pleaded that the respondent is already receiving more rent than is being paid by others in the area. He further denied any increase in the rental value in Jaipur. According to him, the rental value of Rs. 60/- per foot is unreasonable.

After hearing both the parties, vide Order dated 9-12-2003, the learned Judge fixed the provisional rent under Section 7 of the Act as aforementioned. Hence, this appeal before this court. The respondent has filed the cross-objection against the same impugned Order. Hence, this common judgment.

Mr. Ashok Sharma, the learned counsel for the appellant, has argued that the court has not been granted unfettered power for determining the provisional rent. The power is guided by Section 6 (3) of the Act. Thus, the learned Judge should have determined the said rent on the basis of the

criteria fixed under Section 6 (3) of the Act. One of the factors, and according to the learned counsel, the most important factor is the date of the construction. In order to buttress his contention, the learned counsel has relied upon the case of Dr. Balbir Singh and Others v. M/s M. C. D. and Others (AIR 1985 SC 339). Moreover, according to him, Saraogi Mansion is adjacent to Bapu Bazar, a commercial area constructed in the 1940's. Hence, the rental value of Saraogi Mansion shops should be on par with the shops in Bapu Bazar. Secondly, although the application was filed under the Act, but meanwhile the Rajasthan Rent Control Act, 2001 (henceforth, to be referred to as 'the Act of 2001', for short) has come into force. Therefore, the court should have proceeded under the provisions of the Act of 2001. Thirdly, the learned Judge has based his decision on the Valuer's Report submitted by the respondent. The learned Judge has ignored the affidavits filed by the appellant. Lastly, the Judge has erroneously

directed the provisional rent to be paid from the date of institution of the application under Section 6 of the Act. The power to direct the payment of provisional rent from the date of filing of the suit does not exist in Section 7 of the Act. Hence, the learned Judge has exercised a power which the statute does not grant him. Thus, this part of the Order is ultra-vires his jurisdiction.

On the other hand, Mr. G. S. Bapna, the learned counsel for the respondent, has argued that the criteria laid down in Section 6(3) of the Act for fixation of standard rent has been followed by the learned Judge. Secondly, the provisions of Act of 2001 are inapplicable as the application was filed under the Act and not under the Act of 2001. Moreover, there is nothing in the Act of 2001 to indicate that the said Act would have retrospective effect. In the absence of any indication about the retrospective effect to be given to the Act of 2001, the court can not apply the said Act

retrospectively. Thirdly, the appellant had filed only affidavits and did not file any Valuer's Report. On the other hand, the respondent had not only filed his affidavit, but had also filed a Valuer's Report prepared by Mr. Vinay Kumar Soni, an approved valuer with the Finance Department of the Government of India. As it was a case of one affidavit versus the other affidavit, the court was justified in considering the Valuer's Report filed by the respondent. Hence, the Order is legally based on the said Report. Lastly, he has argued that Sections 6 and 7 of the Act are supplementary to each other. Not only Section 6 (3) has to be read into Section 7, but also Section 6 (5) has to be read into Section 7. If Section 6(5) is read into Section 7, then the court does have the power to direct retrospective payment of the provisional rent. He further argued that the landlord should not suffer at the hands of the court, merely because the court has not decided the provisional rent immediately. Hence, the power to direct

retrospective payment of the provisional rent has to be read impliedly into Section 7 of the Act.

We have heard the learned counsels and have perused the impugned Order.

This case requires a critical analysis of Sections 6 and 7 of the Act. However, before the said provisions can be examined, regard must be had to the object and aim of the Act.

The Act was enacted with many fold objects. “The main purpose of the Act is to solve the problem of housing accommodation in the cities and towns of the State of Rajasthan which arose due to influx of refugees from Pakistan, rise in local urban population and a tendency of rural population to go to the cities and town. The shortage of accommodation tempted the owners of the residential and commercial building to charge exorbitant rents and with the purpose of getting higher rent to seek

eviction of the existing tenants. The Legislature had also in mind that several Acts were operating in the field of landlord and tenant's relations in different States. Therefore, a consolidated enactment was brought into existence for the purpose of regulating the relations between the landlord and the tenants by controlling rent and evictions.”

In the case of M/s Shah & Co. v State of Maharashtra (AIR 1967 SC 1877) the Apex Court observed, “the Rent Act deals, substantially, with the relationship of landlord and tenant, in matter of eviction, payment of rent, increase of rent under certain circumstances and the circumstances under which the landlord can get possession of his property.” In the case of Gian Devi v Jeevan Kumar (AIR 1985 SC 796) their Lordships of the Hon'ble Supreme Court held as under:

> The Rent Act seek to preserve social harmony and promote social justice by safeguarding interests of tenants mainly and at the same time protecting the legitimate interest of the

> landlords. Though the purpose of the various Rent Acts appear to be same, namely, to promote social justice by affording protection to tenants against undue harassment and exploitation by landlords providing at the same time for adequate safeguards of the legitimate interests of the landlords. The Rent Acts undoubtedly lean more in favour of the tenants for whose benefit the Rent Acts are essentially passed. It may also be noted that various amendments have been introduced to the various Rent Acts from time to time and when situation so required for the purpose of mitigating the hardship of tenants."

Thus, the object of the Act is to maintain social harmony between the landlord and the tenant and to do social justice to the needs of the tenant. In order to protect the tenant, the Act leans towards his interest. But, simultaneously, it protects the interests of the landlord as well. Hence, while interpreting the provisions the balancing act has to be kept in mind.

Section 6 reads as under:

> *Fixation of standard Rent--(1) Where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be [low or] excessive, the landlord or the tenant may institute a*

suit in th lowest curt of competent jurisdiction for fixation of standard rent for any premises.

(2)....(Note: Omitted as this provision has been declared to be unconstitutional by this court in the case of Khem Chand v State of Rajasthan & Ano.(1999 (1) RLR 694)).

(3) Where for any reason it is not possible to determine the standard rent of any premises on the principal set out in sub-section (2) the court shall determine such rent having due regard to the prevailing rent or standard rent for similar premises in the same locality, the various amenities (such as electricity, water connection, sanitary fitting, and the like) attached to the premises, the cost of construction, maintenance and repairs thereof, the special reasons if any, proved by the plaintiff and other relevant consideration.

(4) In fixing the standard rent for any premises under this section, the court shall determine such rent in respect of the premises in an unfurnished state but may also determine additional charge to be payable on account of fitting and furnishing, and it shall be lawful for the landlord to recover such additional charge from the tenant.

(5) In every case in which the court determines the standard rent of any premises under this section, it shall appoint a date from which the standard rent so determined shall be deemed to

have effect;

[provided that such date shall, in the case of a tenant who institutes a suit under this section after the expiration of six months from the commencement of his tenancy on the ground of the rent agreed upon being excessive, be the date of institution of such suit or such later date as the court may in the circumstances of the case deem reasonable].

Section 7 of the Act is as under:

Fixation of Provisional Rent--(1) Upon the institution of suit under section 6, the court shall forthwith make an order fixing in summary manner a provisional rent for the premises in question, which shall be binding on all the parties concerned and shall remain in force till a decree fixing the standard rent there for is finally made in such suit.

(2) The provisional rent fixed under this section shall also apply to such arrears of rent as, in the case of a tenant who has instituted within six months from the commencement of the tenancy a suit under section 6 on the ground of the rent agreed upon being excessive relate to the period intervening between such commencement and institution.

(3) A suit for the recovery of arrears of rent to which the provisional rent fixed under this section is applicable shall be stayed by the court upon the

payment by the tenant in the court of the total amount due to the landlord on the basis of such provisional rent.

(4) Any failure to pay the provisional rent for any month by the fifteenth day of the next following month shall render the tenant liable to eviction under clause (a) of sub-section (1) of section 13, and all sums due from the tenant as such rent shall be recoverable from him as if the order under sub-section (1) were a decree of the court in a suit for periodical payments.

(5) All amounts paid as provisional rent shall be adjusted towards payment of the standard rent finally decreed.

The holistic reading of these two provisions clearly reveals that the two sections supplement each other. In fact, Section 7 is dependent on Section 6 of the Act. Section 7 comes into operation as soon as an application under Section 6 of the Act is moved. Section 7 of the Act imposes a statutory duty on the court to forthwith determine the provisional rent, when an application under Section 6 of the Act is filed. Therefore, an application under Section 6 triggers off the operation of Section 7 of the Act.

Secondly, the Act distinguishes between “a standard rent” and “a provisional rent”. Section 3 (vi) defines the term “standard rent” as meaning “the rent therefor determined in accordance with the provisions of this Act”. However, the term “provisional rent” has not been defined under the Act. But, the word “provisional” means, “interim, for the time being, temporary, subject to variation, and not final.” Thus, the provisional rent would necessarily mean “an interim rent fixed for the time being till the final decision of the court as to the amount of standard rent”.

Thirdly, sub-section (3) of Section 6 lays down the criteria which should be considered while deciding the standard rent. However, the said criteria has not been enumerated in hierarchy of importance. The different components have to be considered as a whole, in order to determine the standard rent. Sub-section (3) merely lays down the

guidelines for determining the said rent. Since no such guideline has been prescribed in Section 7 of the Act, for the determination of the provisional rent, the guidelines as given in Section 6(3) would have to be necessarily followed. Hence, while determining the provisional rent, the court should consider “the prevailing rent for similar premises in the same locality, the various amenities (such as electricity, water connection, sanitary fitting and the like) attached to the premises, the cost of construction, maintenance and repairs thereof, the special reasons, if any, proved by the plaintiff and other relevant consideration”. Since the guideline has been statutorily provided, the courts are duty bound to adhere to the guideline.

Section 6 (5) empowers the court to determine the applicability of the standard rent from an “appointed date”. Such a power can be exercised by the court in a case instituted both by the landlord or the tenant. The proviso further grants the power

to the court to apply the standard rent from “the date of institution of the suit, or such later date as the court may deem reasonable,” in case the tenant institutes the suit under Section 6 of the Act after the expiry of six months from the commencement of his tenancy. Hence, when the suit has been filed by the tenant after the expiry of six months of tenancy, the court is empowered to decide the date of applicability of the standard rent.

The proviso to Section 6 (5) and Section 7 (2) deal with two different situations. Under the said proviso, when the tenant files his suit under Section 6 of the Act, after six months of the commencement of the tenancy, the standard rent can be fixed by the court from the date of the institution of such suit or such later date as the court may in the circumstance deem reasonable. But, under Section 7 (2) of the Act, where the tenant files his suit under Section 6 of the Act within

six months of the initiation of the tenancy, then the court may direct the payment of the provisional rent relating to the period intervening between such commencement and institution of the suit. The common denominator in both these sub-sections is that the court has the power to direct retrospective payment of rent. However, under Section 6(5) it is the retrospective payment of “the standard rent”, whereas under Section 7 (2) it is the payment of “the provisional rent”. Another common denominator is that under both the sub-sections, the requirement is that the suit be filed by the tenant. Neither of these sub-sections cover a case when the suit is filed by the landlord. Therefore,under Section 7 (2) the court can invokes its power of retrospective payment of provisional rent in case three factors are satisfied:

1) The suit under Section 6 has been filed by the tenant.

2) The suit has been filed within six months of the commencement of the

tenancy.

3) The said suit has been filed on the ground that the agreed rent is too high.

Section 7 (2) thus grants a very limited power to the court to direct the payment of the provisional rent from the date prior to the date of order under Section 7 of the Act. Such a power is limited to the three circumstances enumerated above. Therefore, clearly, the said power does not exist when the landlord files the suit under Section 6 of the Act.

The power under Section 6 (5) of the Act cannot be read as part of Section 7 of the Act. For, the Golden Rule of interpretation is to go by the plain and grammatical meaning of the provision especially when the provision of law is unambiguous. Section 7 of the Act is unambiguous in its language. Therefore, Section 7 should be read plainly and according to its grammatical meaning. A plain

reading of the provision does not reveal that the court has the power to direct the retrospective payment of the provisional rent in a case instituted by the landlord.

Secondly, another cardinal rule of interpretation is that unless a power is expressly provided for, it cannot be read impliedly. To do so, would be to do violence to the language of the provision. Moreover, it would tantamount to amending the law—a function, ordinarily, not bestowed on the courts. Under the proviso to sub-section (5) of Section 6 as well as under Section 7 (2) a power has been given to the court to direct a retrospective payment of the standard rent and provisional rent respectively in cases instituted by the tenant. The said power also exists in a case instituted by the landlord under Section 6(5) of the Act. However, since the said power has not been given expressly, in relation to provisional rent when the case is instituted by a landlord, the said

power cannot be read impliedly into Section 7 of the Act. In case the legislature in its wisdom wished to arm the court with such a power in cases instituted by the landlord, it would have expressly bestowed the power. Since the legislature has refrained from bestowing the said power, it cannot be read impliedly. Moreover, while a guideline may be borrowed and read from another provision in the same Act, a power has to be expressly be given by the legislature to the court. The court cannot assume such a power suo moto. For, such a power does not fall within the inherent powers of the court.

Thirdly, the Mischief Rule of interpretation has to be kept in mind. The Rent Control Acts were enacted with a view to get rid of the mischief of exploitation of the tenant by the landlord. It was meant to protect the tenant from the landlord's demand for increase in rent and from landlord's capricious eviction of the tenant from the rented premises.

Thus, there are certain reasons why this power has been withheld from the court in cases instituted by the landlord. Firstly, the Act leans in favor of the tenant. One of the object of the Act is to protect the tenant from the landlord and to prevent his needless eviction. But, Section 7 (4) clearly states that “any failure to pay the provisional rent for any month by the fifteenth day of the next following month shall render the tenant liable to eviction under clause (a) of sub-section (1) of section 13.” In case the tenant were suddenly saddled with retrospective payment of provisional rent, and in case he is unable to pay the sum, instead of protecting the tenant from eviction, the legislature would have given one more weapon in the hands of the landlord for evicting the tenant. Since the aim of the Act is to prevent the needless eviction of the tenant, the legislature has purposefully not given the power to the court to direct retrospective payment of

provisional rent when the suit is filled by the landlord. In case such a power were given, it would have defeated one of the cardinal aims of the Act. The purpose is not to arm the landlord, but to protect the tenant. Thirdly, the provisional rent is an interim rent. Therefore, at the interim stage, the landlord could not be granted a relief which can be granted to him only after final determination of the case under Section 6 (5) of the Act. It is only with the aim of protecting the interest of the landlord, that the power to direct a retrospective payment of the standard rent has been given to the court under Section 6 (5) of the Act. Thus, the Sections 6 and 7 of the Act have balanced the conflicting interests of the tenant and the landlord. Hence, the argument of Mr. Bapna to read such a power impliedly into Section 7 is without merit.

Hence, the analysis of Sections 6 and 7 of the Act leads to the inevitable conclusion that the

court does not have the power to direct the payment of provisional rent from the date of the filing of the suit in case the suit has been filed by the landlord. In such a case, the provisional rent is to be paid from the date of the order itself.

The second contention raised by Mr. Sharma is about the retrospective applicability of the Act of 2001. According to him, although the suit was filed under Section 6 of the Act, but since during the pendency of the suit, the new Act of 2001 had come into force, therefore, the court should proceed in accordance with the new Act of 2001. This court is unable to agree with this view. For, Section 32 of the Act of 2001 clearly states that “The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 shall stand repealed with effect from the date notified under sub-section (3) of section 1 of this Act. But in sub-section (3) (a) it unequivocally states that “ all applications, suits or other proceedings under the repealed Act pending on the

date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted". Thus, the legislature did not grant a retrospective application of the Act of 2001. Therefore, the contention is without merit.

Another contention raised by Mr. Sharma is with regard to the court having based its decision on the Valuer's Report. Section 7 of the Act postulates that the proceeding under the section should be in "summary manner". In the case of V. N. Vasudeva v Kirori Mal Luhariwala (AIR 1965 SC 440), the Apex Court held, "for the purpose of such an interim order it is not necessary that there should be a full trial." Therefore, the court is not required to hold a mini-trial. The court is required to consider the prima facie evidence and to determine the provisional rent. According to the

learned trial court the Valuer's Report had dealt with all the factors enumerated in Section 6 of the Act. Moreover, the tenant has not submitted any other Valuer's Report in order to counter the Report submitted by the landlord. Hence, at the preliminary stage, the learned Judge was justified in basing his decision on the Valuer's Report produced by the landlord. Thus, the contention raised by the learned counsel has no merit.

Moreover, the appellant did not submit the rent notes, or tenancy agreement of other premises in the locality or within the Saraogi Mansion to prove that the rental value was less than Rs. 55/- per sq. foot. In the absence of such an evidence, the learned Judge has correctly adjudged the issue of provisional rent. One should remember that the determination of provisional rent is subject to final determination of the standard rent. According to Section 7 (5) of the Act, “all amount paid as provisional rent shall be adjusted towards payment

of the standard rent finally decreed”. Therefore, the amount of Rs. 5,500/- paid by the appellant to the respondent shall be adjusted towards the payment of the standard rent finally decreed. Hence, no substantial prejudice is caused to the appellant by this part of the order determining the provisional rent as Rs. 5,500/- per month.

As far as the cross-objection is concerned, the determination of provisional rent is interim in nature. The trial court can determine the standard rent only after going through the entire evidence produced during the proceeding. At the time of final determination of standard rent, the trial court shall be free to direct the payment of rent from an earlier date under its power under Section 6 (5) of the Act. Therefore, the present determination of provisional rent does not adversely affect the rights and interests of the respondent. Thus, there is no merit in the cross-objection filed by the respondent. It is, hereby,

dismissed.

In the result, while this court upholds part of the Order dated 9-12-2003, determining the provisional rent at the rate of Rs. 5,500/- per month, this court quashes and sets aside the direction of the learned court to pay the said provisional rent from 17-4-2001, the date of the filing of the suit under Section 6 of the Act. Hence, this appeal is partly allowed to the extent indicated above. No order as to costs.

(R.S. Chauhan) J.